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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GONZALO S.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, FOR THE COUNTY  
OF LOS ANGELES,

Respondent;

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B177949

(Super. Ct. No. CK52597)

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Jacqueline Lewis,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ denied.

Kenneth A. Krekorian, for Petitioner.

Office of the County Counsel, Larry Cory, Assistant County Counsel and Frank J.  
DaVanzo, Principal Deputy County Counsel, for Real Party in Interest.

Law Offices of Kenneth Sherman and Noel J. Johnson for the Minor.

No appearance for Respondent.

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Gonzalo S., father of Andrea S., a minor born in March 1999, petitions for extraordinary relief pursuant to California Rules of Court, rule 39.1B. He seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> The father complains that he did not receive adequate reunification services during a twelve month reunification period, and that the juvenile court erred in concluding there was no substantial likelihood he and Andrea would reunite within an additional period of reunification. We deny the petition.

### **FACTS AND PROCEDURAL HISTORY**

On July 12, 2003, the Department of Children and Family Services (DCFS) received information that Andrea S., then aged four years, and her three siblings had been generally neglected and that their caretaker, their mother, was sometimes absent or incapacitated by drug use. While Andrea and two of her siblings were found at their home with a maternal aunt babysitting, the mother was found at the hospital, having recently given birth to the youngest sibling. The baby was placed on a hospital hold because he had a positive toxicology screening and the mother had a confirmed history of drug abuse. The other children were later taken into protective custody.

A detention hearing was held on July 16, 2003. By that time, the alleged fathers of the children had been identified. Petitioner Gonzalo S. (father), named as Andrea's father, appeared at the hearing and was deemed Andrea's alleged father, though he questioned paternity. The juvenile court approved the minors' detention and ordered paternity testing for father. It further ordered that Andrea, along with her two older

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

siblings, be placed in their maternal grandparents' home. DCFS was given discretion to also place the baby in the maternal grandparents' home when appropriate.

On August 13, 2003, the juvenile court sustained a section 300 petition alleging the children's mother failed to protect them. Test results established that father is Andrea's biological father. Thereafter, an amendment to the section 300 petition alleging father had failed to provide for Andrea was sustained, as father had little or no contact with Andrea during her life and did not provide her with any support. Rather, Andrea had lived in her maternal grandparents' home since she was three months old. However, father expressed an interest in developing a relationship with Andrea and eventually caring for her. Toward that end, he began visiting Andrea every week or two at her maternal grandparents' home. The juvenile court determined it would be in Andrea's best interest for reunification services to be offered to father, involving conjoint counseling with Andrea if her therapist thought it appropriate, in an effort to establish a parent-child bond. The father was also allowed visits at DCFS offices and telephone visits at least twice per week, with DCFS discretion to liberalize in consultation with Andrea's therapist.

At a six month review hearing, DCFS noted that father had maintained monthly telephone contact with Andrea, and that her therapist was considering when conjoint counseling could begin. Andrea claimed not to know who father was, and denied that he was her "daddy." She further stated she did not wish to visit with father, and resisted when the case worker attempted to force her to attend visits, becoming anxious and scared. Accordingly, father offered to suspend his visits until Andrea was more comfortable with him. Upon the juvenile court's order, DCFS submitted a supplemental report clarifying that conjoint counseling had not yet begun with Andrea and her father because Andrea was uncomfortable even with her therapist, so conjoint counseling was not yet recommended. The court then ordered another six months of reunification

services for Andrea and father, as father was making progress in his case plan and was likely to be able to take custody of Andrea by the twelve month review.<sup>2</sup>

At the twelve month review, DCFS reported that Andrea had continued to be resistant to counseling. Andrea refused to interact with father, even during play therapy. And, although four conjoint counseling sessions occurred, they lead to nightmares and bedwetting. Those reactions ceased once conjoint counseling was halted, and the therapist recommended against forcing more sessions for fear the symptoms would resurface. Andrea continued to deny father was her father and stated she wished to stay with her grandparents and siblings.<sup>3</sup> In the therapist's opinion, Andrea had an adjustment disorder and was unable to form an attachment to father. However, he did not feel it medically necessary to continue therapy. The father suspended visitation with Andrea because he did not wish to upset her further, though he expressed a continuing interest in reuniting with Andrea. The case worker also tried to talk to Andrea about her father, but was met with frustration and refusal. Still, DCFS recommended that father receive another six months of reunification services.

At a contested hearing requested by father, Andrea's therapist was called to testify as to her progress. He stated that although he saw Andrea once a week for six months, Andrea remained resistant to treatment for the entire period. She stated that she did not want to participate in the therapy, and her resistance became even more pronounced when contact with father was introduced. The therapist reported that Andrea needed her maternal grandmother to be present in order to even sit in therapy, and would not agree to be alone even with the therapist until the end of the six months of therapy. He never

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<sup>2</sup> Because the mother failed to reunify, reunification services were terminated as to her and the matter was set for a section 366.26 hearing to terminate her parental rights regarding Andrea. The mother did not petition for review of that order.

<sup>3</sup> The maternal grandparents were adopting Andrea's siblings, as neither their mother nor their fathers had reunified with the children.

attempted to have Andrea attend therapy alone with father, as Andrea appeared to fear father for lack of any attachment to him. In addition, Andrea had episodes of nightmares and bedwetting during the period in which conjoint counseling with father was tried.

Based on that evidence, and at the urging of Andrea's counsel, the juvenile court then determined that although DCFS had provided reasonable reunification services, there was no substantial likelihood Andrea would successfully reunite with father within the next review period. Accordingly, it decided to terminate further reunification services. The court specifically noted that legally father was never more than an alleged father, so provision of even an initial twelve months of reunification services was based on Andrea's best interests alone. However, after reunification efforts failed, Andrea's best interests demanded that a permanent plan be found for her. Additionally, the court recognized that in order to continue reunification beyond a twelve month period, it would have to find that reasonable services were not offered, but the evidence showed DCFS did provide reasonable services that simply were not successful.

Father filed the instant petition challenging the juvenile court's ruling. DCFS's return in support of the ruling was joined by Andrea's counsel.

## **DISCUSSION**

In order for reunification services to be extended past the usual twelve month limit, the juvenile court was required to find either that there was a substantial probability Andrea would be returned to the physical custody of father and safely maintained in his home within the extended period of time, or that reasonable reunification services had not been provided to the father. (§ 361.5, subd., (a); § 366.21, subd. (g).) Such findings are reviewed under the substantial evidence rule. (*In re N.M.* (2003) 108 Cal.App.4th 845, 857; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) That is, the appellate court will not reweigh the evidence or exercise independent judgment regarding the ruling, and will view the record in the light most favorable to the findings. Every reasonable and legitimate inference will

be construed in favor of the finding. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) With regard to reunification services, the standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) In this case, the record reveals substantial evidence to support the juvenile court's conclusion that there was no substantial likelihood Andrea would be returned to father after an additional period of reunification services, and that reasonable services were offered. Thus, its decision must be upheld.

The evidence shows that DCFS remained in consistent contact with Andrea and her father, sought counseling for Andrea, and tried to establish visitation, all in an effort to create some rapport between Andrea and father. Indeed, Andrea attended therapy weekly for a period of six months. Nevertheless, she remained resistant to reunification with father. When Andrea was required to see father, nightmares and bedwetting ensued, leading her therapist to conclude it would not be good for Andrea to continue forcing the issue. Efforts to have Andrea visit with father outside of therapy also failed, resulting in father's ceasing his attempts to visit. The father similarly suspended attempts at telephone contact. The case worker herself tried to talk Andrea into the idea of seeing father, but met with only frustration and refusal from Andrea. In short, despite consistent efforts by DCFS to reunify Andrea with father, reunification did not succeed. As the juvenile court observed, "to reunify with [Andrea] implies that she was once there, and the reality in this case is she never was." Contrary to father's suggestion, the mere fact that reunification efforts failed does not mean those efforts were deficient or create a presumption that an additional period of reunification will make return of the child to her parent a substantial likelihood. The juvenile court's order is supported.

Moreover, reunification services were only offered to father in this case because the juvenile court believed it would be in Andrea's best interests to try and establish a parent-child relationship that might be a resource for Andrea. As an alleged father, father

had no right to demand services for himself. (§ 361.5, subd. (a); *In re Zacharia D.* (1993) 6 Cal.4th 435, 451.) Accordingly, after twelve months of services failed to spark any attachment to father in Andrea, the juvenile court was entitled to again consider Andrea's best interests in terminating further services. The record shows that Andrea was largely afraid of father, a stranger to her. She had lived in her maternal grandparents' home her whole life, and the maternal grandparents were adopting Andrea's siblings. As the juvenile court recognized, forcing continued contact with father was not only hard on Andrea emotionally, but "is hard on her because it goes to threaten the only security this little girl has ever had." Again, the juvenile court's conclusion is supported by substantial evidence and must stand.

#### **DISPOSITION**

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 24(b)(3).)

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ARMSTRONG, J.

We concur:

TURNER, P.J.

MOSK, J.